Office - Supreme Court, U.S.
FILED
OCT 1 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2116

In the Supreme Court of the United States

October Term, 1981

WILLIAM ARCHIE WILLIAMS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONER WILLIAM ARCHIE WILLIAMS

NICKOLAS P. CHILIVIS
(Counsel of Record)
POWELL, GOLDSTEIN, FRAZER & MURPHY
1100 C&S National Bank Building
35 Broad Street, N.W.
Atlanta, Georgia 30335
404/572-6600
Attorney for Petitioner William Archie Williams

E. L. MERRIHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

TABLE OF AUTHORITIES

CASES

United States v. Edwards, 455 F.Supp. 1354 (M.D. Pa. 1978) 2

United States v. Payne, 602 F.2d 1215 (5th Cir. 1979), *cert. denied*, 445 U.S. 903 (1980) 1, 2, 3

United States v. Sher, 505 F.Supp. 858 (W.D. Pa. 1981), *aff'd*, No. 81-1317 (3d Cir. Aug. 14, 1981) 3

United States v. Sher, No. 81-1317 (3d Cir. Aug. 14, 1981) 1, 2

United States v. Williams, 639 F.2d 1311 (5th Cir. 1981) 1-2

STATUTE

18 U.S.C. § 1014 ..... 1, 2, 3

No. 80-2116

In the Supreme Court of the United States

October Term, 1981

WILLIAM ARCHIE WILLIAMS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONER WILLIAM ARCHIE WILLIAMS

As pointed out by the government in its supplemental memorandum, the United States Court of Appeals for the Third Circuit decided the case of *United States v. Sher*, No. 81-1317 (3d Cir. Aug. 14, 1981) on August 14, 1981. The court in *Sher* held that the presentation of worthless checks to a federally insured financial institution did not constitute a violation of 18 U.S.C. § 1014 and expressly declined to follow the contrary reasoning of the Fifth Circuit in *United States v. Payne*, 602 F.2d 1215 (5th Cir. 1979), *cert. denied*, 445 U.S. 903 (1980). These decisions present a conflict between the circuits as to the meaning and application of 18 U.S.C. § 1014. Since Petitioner was convicted under *Payne's* interpretation of the statute on Counts II and III of the indictment, *see United States v. Williams*,

639 F.2d 1311, 1319-20 (5th Cir. 1981), the conflict presented by the contrary decision in *Sher* should be resolved by this Court in order to assure the uniformity of criminal prosecution throughout the *United States*.[1]

In *Payne* the Fifth Circuit agreed with the United States' contentions that a check is a "security" within the meaning of 18 U.S.C. § 1014 and that the presentation of a worthless check to a bank is a misrepresentation of the check's value. The Court stated that "[t]he bank's giving of immediate credit on the deposit of each check constitute[s] an extension of credit or a loan or an advance. The presentation of worthless checks to a bank, therefore, is a transaction intended by Congress to be covered by the statute." *United States v. Payne, supra* at 1217. The court specifically rejected the reasoning of *United States v. Edwards*, 455 F.Supp. 1354 (M.D. Pa. 1978), which held that such presentations are *not* false statements as defined by 18 U.S.C. § 1014.

Sher, however, directly contradicts *Payne's* analysis of the transactions which are within the purview of § 1014. In *Sher*, the Third Circuit expressly agreed with the district court's opinion below, which compared the interpretations of § 1014 contained in *Payne* and *Edwards* and adopted the latter. Although noting that *Payne's* logic had force, the district court said,

> [W]e cannot ignore § 1014's bare language, which is ambiguous with respect to the cashing of checks. Criminal statutes are to be strictly construed, and ambiguities resolved in the defendant's favor. *United*

---

1. There can be no doubt that Petitioner was convicted under the reasoning of *Payne*. In denying Petitioner's attacks on Counts II and III of the indictment on appeal below, the Fifth Circuit characterized his actions as "check kiting" and specifically cited *Payne* as holding that such activity violates § 1014. *United States v. Williams, supra* at 1319-20.

> *States v. Ortega*, 517 F.2d 1006, 1009 (3d Cir. 1975). We agree with the *Edwards* court that if Congress had intended to protect the institutions enumerated in § 1014 from check-kiting schemes, it would have done so explicitly.

United States v. Sher, 505 F.Supp. 858, 861 (W.D. Pa. 1981), *aff'd*, No. 81-1317 (3d Cir. Aug. 14, 1981).

Payne and *Sher* present a direct conflict concerning the interpretation of an important criminal statute which can be resolved only by this Court. Since Petitioner has been convicted in the Fifth Circuit of activities which are not criminal under the same statute in the Third Circuit, justice requires that this Court resolve the matter. To allow *Payne* and *Sher* to stand unreconciled would permit § 1014 to be applied one way to Fifth Circuit defendants and another way to Third Circuit defendants, despite the fact that the defendants stand in exactly the same position. Such a situation is intolerable in a nation which subscribes to equality under law. For this further reason, this Court should grant the Petition for a Writ of Certiorari sought by Petitioner.

Respectfully submitted,

NICKOLAS P. CHILIVIS
POWELL, GOLDSTEIN, FRAZER & MURPHY
35 Broad Street
1100 Citizens and Southern National Bank Building
Atlanta, Georgia 30335
Attorney for Petitioner William Archie Williams

CERTIFICATE OF SERVICE

I, Nickolas P. Chilivis, do hereby certify that I have this day served the within and foregoing Supplemental Brief For Petitioner William Archie Williams by mailing three copies thereof to counsel of record in envelopes properly stamped and addressed as follows:

J. Ransdell Keene, United States Attorney for the Western District of Louisiana
Ansel M. Stroud, III, Assistant U.S. Attorney
D. H. Perkins, Jr., Assistant U.S. Attorney
500 Fanning Street
Shreveport, Louisiana 71101

Rex E. Lee, Esq., Solicitor General
D. Lowell Jensen, Assistant Attorney General
Joel M. Gershowitz, Attorney
Department of Justice - Suite 5143
9th and Constitution Avenue, N.W.
Washington, D.C. 20530

This 30th day of September, 1981.

NICKOLAS P. CHILIVIS